Filed 6/21/10 Marr. of Lance CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of PETER ANTHONY and DONNA MARIE LANCE.	B218817 (Los Angeles County Super. Ct. No. BD222972)
PETER ANTHONY LANCE, Appellant, v. DONNA MARIE LANCE, Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Donna Fields Goldstein, Judge. Affirmed.

Peter Anthony Lance, in pro. per., for Appellant.

Center for Enforcement of Family Support, Raymond R. Goldstein for Respondent.

In this matter following the parties' marital dissolution, Peter Anthony Lance (husband) appeals the order that he pay Donna Marie Lance (wife) her one-half interest in residuals husband received for community intellectual properties (i.e., television and movie scripts) since his bankruptcy filing in September of 1998. Husband contends as follows: (1) the evidence purportedly established that wife waived her right to residuals based on a verbal agreement; (2) the court erred in rejecting husband's equitable estoppel defense; (3) the court abused its discretion in refusing to admit and in improperly evaluating certain evidence; and (4) the court's order contained several factual and legal misstatements. The contentions are unavailing and we affirm.

FACTUAL AND PROCEDURAL SUMMARY

Husband and wife were married in 1983 and separated in 1995. A judgment of dissolution was entered on September 30, 1998. The judgment provided for husband to pay monthly spousal support of $1,900, and monthly child support of $3,000 for the support of the parties' three minor children. Thereafter, the court modified the support orders, reducing husband's obligations to $400 per month for spousal support and $1,671 per month for child support.

Pursuant to the terms of the 1998 judgment of dissolution, all intellectual properties created during the marriage, "from September 10, 1983, through and including September 28, 1995," shall be treated as community properties held jointly by the parties. The judgment noted by script titles 121 specific intellectual properties jointly held by the parties, and 22 disputed properties that husband claimed were not created during the marriage and thus not community properties. The court reserved jurisdiction to resolve disputes regarding the intellectual property.[1]

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[1] Specifically, the reservation of jurisdiction provided as follows: "The Court retains jurisdiction (except as otherwise provided in this Judgment) to make orders and determinations that are necessary and/or appropriate (i) to enforce any of the terms of this Judgment or otherwise effectuate the division of property as specified in this Judgment; (ii) to resolve any matter subject to the jurisdiction of the Court that has not otherwise been resolved by the terms of this Judgment, or to resolve any dispute that may arise

In October of 2007, wife filed a motion for an order to show cause (OSC) to determine reserved community property issues, and she sought payment for her one-half interest in residuals on the community intellectual properties received by husband but not paid to her. Following motions to compel documents from third parties and several continuances, the court held a three-day-long evidentiary hearing. Husband, proceeding in propria persona, essentially acknowledged the lack of payment, but argued that the parties had entered into a stipulation in 1999 whereby he would increase family support, in exchange for which wife would waive all future right to any interest in the community intellectual property.

The evidence adduced at the hearing revealed that after the parties separated in 1995 and prior to 1999, husband often paid for many of the children's extracurricular activities, vacations, clothing, and other expenses in amounts as high as $25,000 per year. In 1999, the parties negotiated regarding a proposed stipulation to modify the judgment. In August of 1999, the parties signed a stipulation intending to modify the judgment—a document captioned "stipulation re modification and order thereon"—but the agreement was never signed by their respective attorneys, and it was never finalized by a court order.

The August 1999 proposed modification of the judgment included the following terms: (1) husband would pay a maximum rent of $3,100 per month for two years for a rental house for wife and the children in Chappaqua, New York; (2) husband would pay a security deposit of up to three months for that house; (3) the spousal and child support would remain at the then current total of $2,071 per month for two years; (4) husband would pay one-half of the children's extracurricular activities (ballet, gymnastics, etc.); (5) husband would be granted all intellectual property rights under the judgment, including those previously awarded to wife; (6) in husband's Chapter 7 personal bankruptcy matter, wife would not file any amended complaint in the adversary case

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concerning the terms of this Judgment; and (iii) to resolve claims regarding omitted or undisclosed property and obligations."

pending and would not resist a dissolution order in the adversary case; and (7) husband would maintain the $2 million life insurance policies, with wife named as sole trustee for the children as beneficiaries.

The trial court found that although wife had signed the agreement, she did not believe the stipulation was final until signed by the parties' attorneys, nor did she believe it constituted a waiver of her share of community intellectual property rights. The stipulation was not signed either by wife's attorney (Trope & Trope) or by husband's attorney (Gary Olsen). In fact, husband's attorney, in a letter to opposing counsel dated August 12, 1999, a copy of which was sent to husband, declared that the stipulation was "of no force and effect, except as it may relate to Mr. Lance's attorney's fees in future proceedings."

Evidence adduced at the hearing also established that the parties thereafter did not act in accordance with the provisions of the proposed stipulation. Although wife and the children did move to New York, they moved to Manhattan and not to Chappaqua. Husband never paid a security deposit or paid any of wife's rent for a house in New York, and husband did not pay to wife any of the proposed $3,100 per month rent money.

From 1999 to 2004, wife struggled financially to support herself and the three children. For a time, they lived with wife's brother in New York, and wife commuted to work. Wife owed legal fees to her attorneys for past work, and she explained that she could not afford to pay additional legal fees for new efforts to enforce her rights to intellectual properties to which she was entitled under the judgment.

Indicative of the fact that husband did owe wife money for her share of the intellectual property residuals, in January of 2006, husband signed a stipulation acknowledging that he owed wife $10,211 in such residuals, and he subsequently paid her that amount. Thereafter, in December of 2006, husband attempted to pay wife $115.47 for intellectual property residuals, noting in the memo field of the check that it was for "50 percent undisputed residuals." (The check, however, bounced due to insufficient funds, and wife did not receive the money.) Similarly, in February of 2008, husband sent wife a check for $360.11, again noting in the memo field of the check that it

was for "undisputed residuals 50 percent." Moreover, in husband's Chapter 7 bankruptcy proceeding, he sought to discharge the intellectual property residual obligations he still owed to wife pursuant to the judgment.

On March 27, 2009, the trial court filed its findings and order (and then an amended findings and order) on wife's OSC for a determination of community property issues and of husband's liability. The trial court found, inter alia, that husband had not established that he had relied on the 1999 stipulation to his detriment, and thus he did not satisfy the elements of the doctrine of equitable estoppel. The court granted wife's OSC regarding the determination of reserved community property issues. The court ordered that husband pay to wife her one-half share of all remuneration he had received from specified community intellectual properties since the filing of husband's bankruptcy on September 21, 1998, which he had not already paid to wife.

In April of 2009, husband filed a motion for reconsideration. He argued, in pertinent part, that the trial court should reconsider its ruling based on new evidence of wife's credibility which allegedly surfaced after the hearing and related to the purported verbal agreement between the parties embodying the material terms of the August 1999 proposed modification to the judgment. Husband's motion for reconsideration relied on court proceedings in New York State regarding child support issues, for the assertion that wife's actions in New York adversely impacted her credibility and thus could have enhanced husband's position as to the existence of the alleged verbal agreement.

Thereafter, the trial court granted husband's motion for reconsideration, but it did not modify its order of March 27, 2009. On September 8, 2009, the trial court clarified its prior order granting the motion for reconsideration. The court stated, in part, that husband's claim of new facts affecting wife's credibility presented facts that arose *after* the hearing resulting in its March 27, 2009, order. The court also noted that husband's reliance on the New York State support proceedings involved different and unrelated subject matter than the present case, which focused on wife's purported waiver of her interest in the parties' community intellectual property. The court thus declined to modify its March 27, 2009, order.

Husband now appeals from the March 27, 2009, order.

DISCUSSION

I. Substantial evidence supports the trial court's finding that the parties had no effective written stipulation and no verbal agreement modifying the community property terms of the 1998 judgment of dissolution.

Applicable legal principles.

"When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment." (*Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465.) Thus, contrary to husband's framing of the issue, whether substantial evidence supports *his* claim of a verbal agreement and wife's purported waiver of rights in residuals is not determinative. Rather, the focus on appeal is whether substantial evidence supports the judgment.

In reviewing the evidence on appeal, all conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences indulged in to uphold the judgment if possible. "[W]hen a [finding] is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the [finding]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.)

Regarding the terms of a judgment of dissolution, it is well settled that the rights and obligations of the parties determined in such a judgment are binding and cannot be undone by subsequent efforts to modify the judgment regarding the division of property. (*In re Marriage of Brown* (1976) 15 Cal.3d 838, 851, fn. 13; *In re Marriage of Farrell* (1985) 171 Cal.App.3d 695, 702.) Of course, as in the present case, the judgment of dissolution may expressly reserve jurisdiction over property issues. Nonetheless, the reservation of jurisdiction does not permit the court to rewrite or modify the property

division judgment; it may only *implement* the judgment with regard to the property issues over which jurisdiction was reserved. (*In re Marriage of Bowen* (2001) 91 Cal.App.4th 1291, 1300; *In re Marriage of Gowan* (1997) 54 Cal.App.4th 80, 86.)

In contrast to property issues, child support orders are modifiable "at any time as the court determines to be necessary." (Fam. Code, § 3651, subd. (a); see *In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1234.) Spousal support awards and agreements are modifiable throughout the support period, except as to amounts accrued prior to filing of the application for modification and except as otherwise provided by the parties' agreement. (Fam. Code, §§ 3603, 3651, subd. (c)(1), 4333.)

The trial court's findings are supported by substantial evidence.

In the present case, substantial evidence supports the trial court's conclusion that there was no effective written stipulation and no verbal agreement modifying the terms of the judgment. The August 1999 stipulation regarding a modification of judgment was signed by the parties, but was never signed by their counsel and was never approved by the trial court.

Indeed, husband acknowledged during cross-examination at the hearing that he had not produced the last (the fourth) page of the written stipulation, which had spaces for the attorneys' signatures and a space for the court's signature to approve and finalize the agreement. Also, husband offered no evidence to contradict his attorney's letter dated August 12, 1999, which concluded that the written stipulation was "of no force and effect." Additionally, wife testified that she did not believe the stipulation was final until signed by the parties' attorneys, nor did she believe it constituted a waiver of her share of community intellectual property rights.

Not only was there substantial evidence of no effective written stipulation, but husband failed to present any evidence at the hearing of a purported verbal stipulation. Significantly, during husband's cross-examination of wife he did not ask a single question about when such a purported verbal agreement was made, where it was made, what words were used, or who was present at the time of the supposed agreement. It

appears that husband's theory of a separate verbal agreement is, in fact, grounded only in the notion of the written, but ineffective stipulation of August 1999.

Husband's own testimony indicates that he apparently confused the verbal negotiations that led up to the ineffective written agreement with the concept of a separate verbal agreement. He stated, for example, "I always argued that we had at least a verbal agreement and I repeated it for years and years. And it was my memory that it was a verbal agreement, but as I found in this evidence [at the hearing] it was a written agreement." Similarly, in husband's closing argument at the hearing he acknowledged as follows: "[The reason why in proceedings in New York] I always talked about it as verbal, is that that's how I recalled the agreement. [¶] And only last summer when I went into the file and I mentioned I found this file, did I realize—was I reminded that we'd gone through this negotiations between [the attorneys]. That we both sign the thing . . . ."

Husband's own testimony and his argument at the hearing thus reveal that a separate verbal agreement never existed. Although on appeal husband denies any confusion, it appears he may have confused the verbal negotiations that led up to the ineffective written agreement with the concept of a separate verbal agreement—a verbal agreement which did not exist as an independent understanding of the parties.

Moreover, the ineffective August 1999 written agreement, characterized by husband as new documentary evidence that wife had purportedly waived all rights to disputed and undisputed intellectual properties, was the focus of husband's arguments in several documents written or filed by him. Husband, for example, focused on the ineffective written agreement (1) in his July 30, 2008, letter sent to wife's attorney, (2) in husband's November 24, 2008, "notice of lodging, and declaration" filed in the trial court, and (3) in husband's December 1, 2008, reply to wife's supplemental and evidentiary brief in support of her OSC and motion seeking her 50 percent share of residuals from intellectual property. However, none of husband's documentary evidence or pleadings pointed to when, where, or how a separate verbal agreement purportedly was made.

Nor is there any support for husband's speculation that wife did not take enforcement efforts after 1999 because she believed that she had waived her rights to the intellectual properties. To the contrary, wife explained that she was unable, not unwilling, to pursue such enforcement efforts until 2004 because of the legal expense involved and her focus on child care concerns. As wife explained, she was behind in her attorney fees payments in 1999, and her attorney had explained that there was then no threat that her share of the residuals could be taken away.

Accordingly, contrary to husband's assertion, there was no evidence of a verbal agreement. There were at most only discussions prior to the August 1999 written stipulation, and that written stipulation ultimately was never put into effect.

II. Wife was not equitably estopped from denying a verbal agreement.

To the extent husband attempts to transform unsuccessful negotiations, which resulted only in the 1999 unconsummated stipulation, into a viable agreement, such an effort is unavailing. It is well settled that a party cannot rely on unsuccessful settlement negotiations as the basis for a claim of equitable estoppel. (See *Lobrovich v. Georgison* (1956) 144 Cal.App.2d 567, 573-574.)

Estoppel is also unavailing because substantial evidence establishes that none of the elements necessary for its application exist in the present case. A party seeking to establish estoppel must establish the following elements: the party to be estopped knew the facts; the other party was ignorant of the true facts; the party to be estopped intended that its conduct be acted on, or acted such that the other party had a right to believe it was so intended; and the other party relied on that conduct to its injury or detriment. (*In re Marriage of Thompson* (1996) 41 Cal.App.4th 1049, 1061.)

The elements of the doctrine of estoppel, as described above, are inapplicable to the facts of this case. First, the party to be estopped, wife, did not know the facts, meaning that the parties' stipulation was in effect and governing their conduct under the judgment. In fact, wife knew that the written stipulation was never put into effect, and she did not receive any rent money, for example, as would have been required if the stipulation were in force.

Husband's theory is that for over four years he essentially performed under the agreement by making over $3,000 per month in payments (in addition to his support payments) for extracurricular activities and other benefits for the children, in lieu of rent for the house. However, this was a unilateral arrangement to which wife never agreed, and of which she was ignorant. Indeed, husband did not provide wife with any accounting of the specific amount of money he lavished on the children's extracurricular activities, vacations, and sporadic luxuries.

The second element of estoppel was not satisfied either, because husband, the other party, was not ignorant of the true facts. Husband knew, for example, that contrary to the terms of the unconsummated stipulation, wife never moved into any house for which he paid any part of her rent, and wife did in fact file an adversary claim in his Chapter 7 bankruptcy proceeding.

Nor were the other two elements of estoppel satisfied. The party to be estopped, wife, did not intend that her conduct be acted upon by husband, and husband did not rely to his injury or detriment on wife's conduct. The evidence established, for example, that in 2003 wife asked husband for payment from his residuals, and in 2004 she filed a motion in New York seeking to enforce her share of residual payments. And, husband did not rely on wife's conduct to his injury or detriment, because the bulk of the money he spent on the children he was either already required to spend under the terms of the judgment (e.g., health care costs, etc.), or he had already been paying such expenses prior to August 1999 (e.g., extracurricular activities, vacations, children's clothing, etc.).

Finally, there simply is no legal support for the notion that equitable estoppel can be applied to modify a final judgment, as distinguished from determining performance under the judgment. The doctrine of equitable estoppel relates to performance under a contract, the existence of a contract, or performance under a court order or judgment. (See *In re Marriage of Trainotti* (1989) 212 Cal.App.3d 1072, 1075; *In re Marriage of Valle* (1975) 53 Cal.App.3d 837, 841.) Husband cannot use equitable estoppel to essentially modify a final judgment as to property division long after it was entered.

The judgment of dissolution did reserve jurisdiction regarding issues of enforcement, division of property as specified in the judgment, matters not resolved by the judgment, and claims regarding omitted or undisclosed property and obligations. However, the trial court did not reserve any jurisdiction to reallocate the rights to already distributed intellectual properties after the judgment was final. Such a reallocation would have been beyond the jurisdiction of the trial court.

Accordingly, there is no merit to husband's claim of equitable estoppel.

III. Other issues.

Husband also contends the trial court abused its discretion in refusing to admit and in improperly evaluating certain evidence, and that its order contained several factual and legal misstatements. These contentions are unavailing.

Evidentiary complaints.

Husband complains that the trial court refused to admit evidence that would have impeached wife's credibility. Specifically, husband complains that the court abused its discretion in refusing to admit into evidence two sworn pleadings (dated December 9, 2003, and January 20, 2004, from New York State) that would have revealed wife's conflicting accounts of husband's support obligation, and two exhibits documenting how wife had purportedly lied to support enforcement authorities in the Los Angeles County District Attorney's Office about the amount of husband's support obligation.

Husband asserts that although these documents had probative weight and were supposedly "a key factor in evaluating the viability of the verbal agreement," the trial court abused its discretion in prohibiting cross-examination of wife regarding those documents. However, the trial court properly found that the pleadings in question from New York State were not properly certified, as the rules of evidence require for the admission of such documents. (Evid. Code, § 1450 et seq.)

Regarding a letter addressed to husband from the Los Angeles County District Attorney's Office, husband sought to use it to refresh wife's recollection. However, even assuming the propriety of such a letter addressed to husband to refresh the recollection of wife, who was neither the author nor the intended recipient of the letter (see Evid. Code,

§ 771), its probative value was questionable and within the broad discretion of the court to exclude. (Evid. Code, § 352.) In any event, no miscarriage of justice resulted from the exclusion of such peripheral evidence (Evid. Code, § 354), which would not have directly established any verbal agreement.

Alleged misstatements in the trial court's order.

Husband complains that the trial court mistakenly remarked in its order that "most of" the exhibits in his notice of lodging dated December 9, 2008, were not entered into evidence. He asserts that the admission of those documents was crucial to establish his performance under the terms of the purported verbal agreement. Specifically, husband contends that the exhibits not considered were numerous checks to third parties and to wife that, indeed, were entered into evidence by stipulation and testified to extensively on the third day of trial. Husband argues that those checks reflected benefits to the children (e.g., travel, clothing, and extracurricular activities) and supported his notion of a verbal agreement between the parties.

Where a document is produced by a party and given to the trial court for its consideration, and it is clear that the court did consider the document after both parties had an opportunity to examine witnesses about the document, the lack of a formal tender of evidence "does not deprive the document of its true character as evidence." (*Walsh v. Walsh* (1952) 108 Cal.App.2d 575, 579.) In light of that expansive view of what constitutes evidence, the trial court arguably did mischaracterize the state of some husband's evidence.

Nonetheless, the trial court's order also clearly itemized, treated as admitted into evidence, and did consider many other receipts, checks, and documents representing similar expenses by husband. For example, the trial court noted receipts for trips and vacations with the children, such as a rented beach house in Newport, fishing charters, a trip to Paris with the children, and sailing lessons for the children. It also noted expenses related to the children's dog, clothing and gifts for the children, meal expenses, and payments made directly to the children. Because the legal issue involved the nature and significance of those expenses, and not the exact amount of the expenses, any

misstatements by the trial court as to whether some of the checks were admitted into evidence was harmless error. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56-57.)

Husband also complains that the trial court mistakenly concluded that he was compelled by the terms of the dissolution judgment to maintain life insurance policies for the parties. Specifically, husband asserts that the maintenance of life insurance policies was at his sole discretion and voluntary, but that the trial court mistakenly characterized some his receipts as for "payments for life insurance policies which are expenses attributed solely to him under the judgment."

The terms of the September 1998 judgment of dissolution provided that husband "has the option" of maintaining then existing $2 million life insurance policies, with the children as irrevocable beneficiaries, and "if he elects to maintain the policies, they shall be at his sole expense." We see nothing inconsistent between that language and the trial court's statement that payments for life insurance policies are "attributed solely to" husband pursuant to the judgment, because the judgment did not mention any payments by wife.

Pursuant to the terms of the judgment, payments for life insurance are attributable to husband, and the payments are not mandatory. Husband has the option to maintain the policies; if he chooses to do so, it will be at his sole expense. To the extent the trial court's statement cast any confusion over the terms of judgment of dissolution, the language in the judgment itself obviously prevails. Thus, even if the trial court's language lacked perfect clarity, it was of no consequence.

Finally, husband faults the trial court for some of its interpretation of the law and its case citations regarding the viability of verbal agreements in divorce property matters. However, an appellate court focuses not on the stated reasoning of the trial court, but on its ultimate conclusions. Generally, the reasoning given by a trial court for its ruling is irrelevant on appeal because "we review the trial court's actual ruling, not its reasons." (*Punsly v. Ho* (2003) 105 Cal.App.4th 102, 113.) "'If the *decision* of a lower court is correct on any theory of law applicable to the case, the judgment or order will be

affirmed regardless of the correctness of the grounds [on] which the lower court reached its conclusion.'" (*In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 632.)

As previously discussed, the trial court correctly found no viable verbal agreement. Nor did the court prejudicially err in any other regard.

DISPOSITION

The order under review is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.